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Dixie Electric Membership Corporation and International Brotherhood of Electrical Workers, Local Union 767. Cases 15–CA–019954 and 15–UC–061496

November 19, 2014

DECISION AND ORDER

BY MEMBERS HIROZAWA, JOHNSON AND SCHIFFER

On August 31, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB No. 120. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Fifth Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board’s Decision and Order and remanded this case for further proceedings consistent with the Supreme Court’s decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge’s decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein. Accordingly, we affirm the judge’s rulings, findings and conclusions, to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB No. 120, which is incorporated herein by reference,¹ we adopt judge’s recommended Order, as modified herein.²

¹ Member Johnson concurs that the Respondent violated Sec. 8(a)(5) by changing the scope of the unit without the Union’s consent when it removed the chief system operator (CSO) and system operators (SOs) from the unit. See *Arizona Electric Power Cooperative, Inc.*, 250 NLRB 1132 (1980) (finding that, independent of whether dispatchers were supervisors, utility unlawfully removed dispatchers from unit without union’s consent during term of contract). Because it would not materially affect the remedy, Member Johnson finds it unnecessary to decide whether this conduct also violated Sec. 8(a)(5) as a unilateral transfer of unit work or whether the Union waived its right to bargain over any transfer.

In concurring in the finding that the UC petition was untimely filed, Member Johnson notes that he would not find the 4-month delay here

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Dixie Electric Membership Corporation, Baton Rouge, Louisiana, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(f) and reletter the subsequent paragraphs.

“(f) Compensate employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.”

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. November 19, 2014

Kent Y. Hirozawa,	Member
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Harry I. Johnson III,	Member
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Nancy Schiffer,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

unreasonable if the parties had agreed to this amount of time in their side agreement. In the absence of an agreed-upon timeframe, however, the Respondent was required to file its petition “shortly after the contract was executed.” *WNYS-TV*, 239 NLRB 170, 171 (1978). The cases cited by the judge demonstrate that the gap here is beyond what the Board has allowed.

Finally, Member Johnson notes that the Respondent’s citation of *Gratiot Community Hosp. v. NLRB*, 51 F.3d 1255, 1262 (6th Cir.1995), is actually a citation to the dissenting opinion, and thus not an accurate statement of the law. Rule 102.46(c)(3) of the Board’s Rules and Regulations requires that parties “clearly” present the facts and law in support of their argument; the Respondent’s misleading citation to *Gratiot* fails to meet this standard.

² We shall modify the judge’s recommended Order in accordance with our recent decision in *Don Chavas LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014). We shall also substitute new notices to conform to the modified Order and in accordance with our decision in *Durham School Services*, 360 NLRB No. 85 (2014).

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT remove chief systems operators and systems operators from the bargaining unit represented by the International Brotherhood of Electrical Workers, Local Union 767, without the Union's consent.

WE WILL NOT fail and refuse to recognize the Union as the exclusive collective-bargaining representative of our employees holding chief systems operator and systems operator positions and WE WILL NOT fail and refuse to apply the terms of the existing collective-bargaining agreement to those employees.

WE WILL NOT transfer work from unit employees to nonunit employees, without first affording the Union notice and an opportunity to bargain over the transfer decision and its effects.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our December 1, 2010 elimination of the bargaining unit chief systems operator and systems operator positions, related reclassification of these jobs as nonunit positions, and consequent transfer of the work performed by these positions outside the unit.

WE WILL recognize the Union as the exclusive collective-bargaining representative of the employees occupying the chief systems operator and systems operator positions, and, upon request, bargain with the Union regarding those employees' wages, hours, and other terms and conditions of employment.

WE WILL apply the terms of the existing collective-bargaining agreement between Dixie Electric Member-

ship Corporation and the Union to employees occupying the chief systems operator and systems operator positions, in the absence of any agreement to the contrary. However, the Board has not authorized or required us to withdraw or eliminate any wage increase or other improved benefits or terms or conditions of employment, which may have already been afforded to the chief systems operator and systems operator positions, as compared to the wages, benefits, and terms, or conditions of employment of bargaining unit employees.

WE WILL notify and, upon request, bargain with the Union in good faith before transferring any work from unit employees to nonunit employees.

WE WILL make whole any unit employees for any loss of wages and benefits they may have suffered as a result of our unlawful actions and, to the extent the chief systems operator and systems operators lost coverage for various benefits provided under the collective-bargaining agreement, WE WILL reimburse them for any expenses incurred as a result of their lapse in such coverage.

WE WILL compensate employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

DIXIE ELECTRIC MEMBERSHIP CORPORATION

The Board's decision can be found at www.nlr.gov/case/15-CA-019954 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

